

Before the  
Federal Communications Commission  
Washington, D.C. 20554  
5:11:00 AM '98

In the Matter of

Federal-State Joint Board on  
Universal Service

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CC Docket No. 96-45

## ORDER

**Adopted:** December 30, 1997

**Released:** December 30, 1997

By the Chief, Common Carrier Bureau:

### I. INTRODUCTION

1. This Order addresses multiple petitions for waiver of the Commission's rule requiring that, in order to receive federal universal service support for state Lifeline programs, the state's consumer qualification criteria must be based solely on income or factors directly related to income. Several states have petitioned for waiver because they need time to conform their laws to this rule. In this Order, we grant temporary waivers of this rule to avoid interrupting Lifeline assistance for consumers who are currently receiving support. We deny other requests for a waiver.

### II. BACKGROUND

2. On May 8, 1997, the Commission released an Order that established new federal universal service support mechanisms, consistent with the Communications Act of 1934, as amended.<sup>1</sup> In the *Order*, the Commission revised its low-income programs, Lifeline and Link Up. The Commission's Lifeline program reduces qualifying consumers' monthly charges,<sup>2</sup> and Link Up provides federal support to reduce qualifying consumers' initial

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<sup>1</sup> Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776 (rel. May 8, 1997) (*Order*). The Commission released an erratum correcting this *Order* on June 4, 1997.

<sup>2</sup> Currently, Lifeline support is provided in the form of a waiver of the federal subscriber line charge (SLC). To participate, states must generate a matching reduction in intrastate end-user charges. States may choose to participate in either of two Lifeline programs. Under Plan 1, qualifying consumers' monthly bills are reduced through a waiver of one half of the \$3.50 federal SLC. The consumer's incumbent LEC receives the waived amount from the Lifeline Assistance Fund. The consumer's bill is further reduced by state support that must

connection charges by up to one half. The Commission revised these programs to make them available to low-income consumers in every state and territory in the nation.<sup>3</sup> To further increase the availability of Lifeline and Link Up, the Commission required states that provide intrastate Lifeline funds to establish Lifeline consumer qualification criteria based solely on income or factors directly related to income.<sup>4</sup> In so doing, the Commission intended to prohibit states from limiting Lifeline to only those low-income consumers who are elderly or have disabilities.<sup>5</sup> For states that do not provide intrastate Lifeline funds, the Commission established federal default consumer qualification criteria.<sup>6</sup>

3. In the *Order*, the Commission defined Lifeline service to include, at a minimum: single-party service, voice grade access to the public switched telephone network (PSTN), Dual Tone Multifrequency (DTMF) signaling or its functional digital equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation.<sup>7</sup> Eligible telecommunications carriers must provide Lifeline service, as defined by the Commission, to receive federal support for providing Lifeline service.<sup>8</sup>

4. On October 2, 1997, the Public Utilities Commission of Ohio (PUCO) filed a petition for a waiver of the requirement that its Lifeline consumer qualification criteria be based solely on income or factors directly related to income.<sup>9</sup> PUCO asserts that, pursuant to Ohio state law, the consumer qualification criteria for its low-income telephone assistance

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match or exceed the federal contribution. Plan 2 provides for a waiver of the entire SLC (up to the amount matched by the state), and the consumer's bill may be reduced by twice the SLC (or more, if the state more than matched the value of the federal waiver). See 47 C.F.R. § 69.104(j)-(l).

<sup>3</sup> *Order*, 12 FCC Rcd at 8961.

<sup>4</sup> *Order*, 12 FCC Rcd at 8973. See also 47 C.F.R. § 54.409(a).

<sup>5</sup> *Order*, 12 FCC Rcd at 8973.

<sup>6</sup> *Order*, 12 FCC Rcd at 8973-74. To qualify for Lifeline service pursuant to the federal default consumer qualification standard, consumers must participate in one of the following programs: Medicaid, food stamps, Supplementary Security Income (SSI), federal public housing assistance or Section 8, or Low Income Home Energy Assistance (LIHEAP). *Id.* at 8974.

<sup>7</sup> *Order*, 12 FCC Rcd at 8979-8980.

<sup>8</sup> *Order*, 12 FCC Rcd at 8961.

<sup>9</sup> Petition for Waiver for the Public Utilities Commission of Ohio, CC Docket No. 96-45, (October 2, 1997) (PUCO Waiver Petition).

program is based on age and disability, in addition to income.<sup>10</sup> PUCO asked for a waiver of section 54.409(a) so that its currently participating low-income consumers may continue to benefit from federal Lifeline support. In a December 10, 1997 filing elaborating on its petition for a waiver, PUCO stated that its existing low-income assistance program is scheduled to expire on December 31, 1999.<sup>11</sup> PUCO further asserted that it currently is reviewing its policies concerning low-income telephone assistance to make them more consistent with Commission rules.

5. PUCO also seeks a waiver of section 54.401(a)(3), which requires all eligible telecommunications carriers to provide toll-limitation service free of charge.<sup>12</sup> PUCO appears to assert that, because state law allows Lifeline participants to purchase only certain non-basic services, including toll limitation, and because those services must be provided at the tariffed rate,<sup>13</sup> PUCO may not require service providers to provide toll-limitation services free-of-charge to Lifeline consumers.<sup>14</sup>

6. On October 29, 1997, the Idaho Public Utilities Commission (Idaho PUC) submitted a request for a temporary waiver of the rule requiring states that provide intrastate Lifeline funds to establish Lifeline consumer qualification criteria based solely on income or factors directly related to income.<sup>15</sup> The Idaho PUC contended that Idaho state law limits Lifeline service to consumers who participate in the Low Income Home Energy Assistance Program and are at least 60-years-old.<sup>16</sup> The Idaho PUC further explained that the Idaho legislature will convene January 12, 1998, and any statutory amendments likely will not become effective until July 1, 1998.<sup>17</sup> The Idaho PUC maintains that it will propose that the legislature amend its Lifeline statute to eliminate the consumer qualification criterion based on

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<sup>10</sup> PUCO Waiver Petition at 2.

<sup>11</sup> Letter from Steven T. Nourse, Ohio Assistant Attorney General, to William F. Caton, FCC, CC Docket No. 96-45 (December 10, 1997).

<sup>12</sup> PUCO Waiver Petition at 2.

<sup>13</sup> PUCO Waiver Petition at 2-3.

<sup>14</sup> PUCO Waiver Petition at 3.

<sup>15</sup> Idaho Public Utilities Commission's Petition for Waiver and Request for Expedited Ruling, CC Docket No. 96-45 (Oct. 29, 1997) (Idaho PUC Waiver Request).

<sup>16</sup> Idaho PUC Waiver Request at 2.

<sup>17</sup> Idaho PUC Waiver Request at 2.

age, and thus bring the statute into compliance with Commission rules.<sup>18</sup> The Idaho PUC therefore seeks a temporary waiver until July 1, 1998 of section 54.409(a), in order to allow Idaho's existing Lifeline consumers to continue to benefit from federal Lifeline support until July 1, 1998.<sup>19</sup>

7. On November 12, 1997, the Minnesota Public Utilities Commission (Minnesota PUC) filed a request for a temporary waiver until August 1, 1998 of section 54.409(a).<sup>20</sup> The Minnesota PUC stated that Minnesota state law currently requires Lifeline consumer qualification criteria to be based on both income and age or disability.<sup>21</sup> The Minnesota PUC stated that the Minnesota legislature will begin its 1998 legislative session in February, and any changes in legislation that bring Minnesota's Lifeline consumer qualification criteria into compliance with Commission rules likely will not become effective until August 1, 1998.<sup>22</sup> According to the Minnesota PUC, a task force is scheduled to submit a report to the state legislature by January 15, 1998, explaining how to bring Minnesota's Lifeline consumer qualification criteria into compliance with Commission rules.<sup>23</sup>

8. On December 4, 1997, the Arizona Corporation Commission (ACC) submitted a request for an expedited waiver of section 54.409(a) with respect to its two telephone assistance programs for low-income consumers.<sup>24</sup> On December 12, 1997, U S West filed comments to the ACC's petition.<sup>25</sup> The first program, the Arizona Low Income Telephone Assistance Program (ALITAP) applies to all local exchange carriers (LECs) in Arizona and, pursuant to state statute, bases consumer qualification on age and income.<sup>26</sup> The ACC seeks a temporary waiver until July 30, 1998 of section 54.409(a) with respect to ALITAP, at which

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<sup>18</sup> Idaho PUC Waiver Request at 2.

<sup>19</sup> Idaho PUC Waiver Request at 2.

<sup>20</sup> Minnesota Public Utilities Commission's Request for Waiver, CC Docket No. 96-45, (Nov. 12, 1997) (Minnesota PUC Wavier Request).

<sup>21</sup> Minnesota Waiver Request at 1.

<sup>22</sup> Minnesota Waiver Request at 2.

<sup>23</sup> Minnesota Waiver Request at 2.

<sup>24</sup> Request of the Arizona Corporation Commission for Expedited Waiver of 47 C.F.R. § 54.409(a), CC Docket No. 96-45, (December 4, 1997) (Arizona Waiver Request).

<sup>25</sup> Comments of U S West Communications, Inc. on the Arizona Corporation Commission's Petition for Expedited Waiver of 47 C.F.R. § 54.409(a), CC Docket No. 96-45, filed December 12, 1997 (US West comments).

<sup>26</sup> Arizona Waiver Request at 2.

time, the ACC anticipates, the Arizona legislature will have made the amendments necessary to bring the program into conformity with section 54.409(a).<sup>27</sup> The ACC also requests that, until July 30, 1998, consumers who meet the federal default consumer qualification criteria be permitted to benefit from federal Lifeline support, even if those consumers are ineligible for support under the state low-income program.<sup>28</sup>

9. In addition, the ACC seeks a waiver of section 54.409(a) for an indefinite period of time with respect to its other low-income assistance program, the Telephone Assistance Program (TAP).<sup>29</sup> The ACC explains that TAP is available only to customers of U S West who are low-income and disabled or in need of medical assistance. The ACC further explains that it established TAP as part of a U S West rate case pursuant to which U S West receives approximately \$1 million annually.<sup>30</sup> The ACC states that TAP customers receive a credit of \$13.43 (U S West's local service rate) and a \$3.50 waiver of the federal subscriber line charge.<sup>31</sup> The ACC seeks a waiver indefinitely of section 54.409(a) so that the "TAP program for the medically needy or disabled can remain in place and [U S West] can receive federal matching funds for this program in the future." The ACC asserts that if it is directed to change TAP's consumer qualification criteria, TAP participants would be able to receive no more than a \$10.50 reduction in their monthly bill.<sup>32</sup>

10. U S West asks us to issue a declaratory ruling that ALITAP's and TAP's consumer qualification criteria comport with section 54.409, "even though one of the eligibility criteria for ALITAP is related to age and the eligibility criteria for TAP are related to medical need and disability."<sup>33</sup> U S West requests that, if we do not issue such a ruling,

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<sup>27</sup> Arizona Waiver Request at 1.

<sup>28</sup> Arizona Waiver Request at 1, n.1. In a December 10, 1997, letter, the ACC reiterated its argument that, until its state consumer qualification criteria are amended to comport with the Commission's rules, the federal default criteria should apply in Arizona. See letter from Paul A. Bullis, Arizona Corporation Commission, to Magalie Roman Salas, FCC, CC Docket No. 96-45, dated December 10, 1997. The ACC further states in its letter that it will be addressing a recommendation from its staff to adopt the federal default criteria as its state criteria. *Id.* at 1.

<sup>29</sup> Arizona Waiver Request at 1. See also U S West comments at 5 (agreeing with the ACC that the Commission should waive section 54.409(a) for an indefinite time with regard TAP).

<sup>30</sup> Arizona Waiver Request at 1, 3.

<sup>31</sup> Arizona Waiver Request at 2-3.

<sup>32</sup> Arizona Waiver Request at 3-4.

<sup>33</sup> U S West comments at 2, 4-5.

we grant a permanent waiver of section 54.409(a) with regard to ALITAP.<sup>34</sup> U S West further requests that, with respect to TAP, we waive section 54.409(a) for an indefinite time.<sup>35</sup> Finally, U S West maintains that it would not be able, by January 1, 1998, to make the necessary changes to its billing system if the Commission were to allow, until July 30, 1998, consumers who meet the federal default consumer qualification criteria, but who do not necessarily meet the state criteria, to benefit from federal Lifeline support.<sup>36</sup> U S West asserts that if the Commission were to reach such a conclusion, U S West would be required to "have its billing system in Arizona ready to handle three Lifeline programs" by January 1, 1998.<sup>37</sup>

### III. DISCUSSION

11. Under section 1.3 of our rules, we may waive any provision of our rules and orders if "good cause" is shown.<sup>38</sup> The standard for good cause requires the petitioner to demonstrate that special circumstances warrant deviation from the rules, and that such a deviation would better serve the public interest than strict adherence to the general rule.<sup>39</sup>

12. In this instance, we find that the Idaho PUC, Minnesota PUC, and ACC have demonstrated that special circumstances warrant a temporary waiver of section 54.409(a). Specifically, in Idaho, Minnesota, and Arizona, Lifeline consumer qualification criteria are codified by state law, and amendments to such laws likely will not become effective until July 1, 1998, August 1, 1998, and July 30, 1998, respectively. In addition, we find that it will serve the public interest to ensure that there is no disruption of federal Lifeline support to existing Lifeline consumers in these states while their respective legislatures amend their statutes to bring them into conformity with Commission rules. Thus, consumers in Idaho, Minnesota, and Arizona who currently are eligible to receive low-income assistance pursuant to applicable state laws will be eligible to benefit from the appropriate new level of federal Lifeline support and state matching support until July 1, 1998, August 1, 1998, and July 30, 1998, respectively. Petitioners assert that they will work diligently to encourage their respective legislatures to amend their Lifeline statutes so that they are consistent with Commission rules. We therefore anticipate that extension of these temporary waivers will not

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<sup>34</sup> U S West comments at 5.

<sup>35</sup> U S West comments at 5.

<sup>36</sup> U S West comments at 7-8.

<sup>37</sup> U S West comments at 7-8.

<sup>38</sup> 47 C.F.R. § 1.3.

<sup>39</sup> See *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

be necessary beyond next summer.

13. We deny PUCO's request for a waiver of section 54.409(a) for an indefinite period of time, and instead grant PUCO a temporary waiver of section 54.409(a) until December 31, 1998. We find special circumstances in the fact that Ohio's Lifeline consumer qualification criteria are codified by state law. We further find that a temporary waiver of section 54.409(a) serves the public interest by allowing currently participating Lifeline consumers in Ohio to continue to benefit from federal Lifeline support. Current Lifeline consumers should not be prohibited from benefitting from federal Lifeline support solely because the state may not have had adequate time to modify its law to comport with federal rules. We conclude, however, that it would not serve the public interest to allow Ohio to limit Lifeline assistance for an indefinite time to only those low-income consumers who are disabled or in need of medical assistance. We find that granting PUCO a waiver until December 31, 1998, will provide ample time to enable Ohio to conform its laws to federal Lifeline assistance requirements.<sup>40</sup> Although Ohio's Lifeline program is scheduled to expire December 31, 1999, it would not serve the public interest to grant PUCO a waiver until that time for the following reasons. In the *Order* the Commission sought, in revising its low-income programs, to expand the availability of Lifeline.<sup>41</sup> The Commission agreed with the Joint Board that, in order to be eligible for federal support, states must base Lifeline consumer qualification criteria solely on income or factors directly related to income.<sup>42</sup> Consistent with the public interest and the Commission's objectives in the *Order*, we find that we should grant PUCO a temporary waiver of section 54.409(a) until December 31, 1998.

14. We deny the ACC's and U S West's request for an indefinite waiver of section 54.409(a) with respect to TAP, the low-income program exclusively for U S West consumers. As stated above, consumers in Arizona who currently receive low-income assistance, including TAP participants, may, until July 30, 1998, continue to receive federal Lifeline assistance. Beginning July 30, 1998, consumers who meet Arizona's new consumer qualification criteria, including current TAP participants who meet such criteria, may receive federal Lifeline assistance. We emphasize that the ACC and U S West may continue to offer low-income consumers who also are disabled or in need of medical assistance, i.e., TAP consumers, a support amount that is higher than that offered to consumers who meet only income-based criteria. Although the federal support mechanisms will provide a maximum of \$7.00 to qualifying consumers, states are not limited in the amount of Lifeline assistance they provide, nor are states prohibited from offering different levels of assistance to different

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<sup>40</sup> The fact that at least three states expect to modify their laws by summer 1998 further supports this conclusion.

<sup>41</sup> *Order*, 12 FCC Rcd at 8973.

<sup>42</sup> *Order*, 12 FCC Rcd at 8973.

classes of consumers.

15. We deny the ACC petition to the extent that it requests that consumers who meet the federal default consumer qualification criteria in Arizona be allowed to benefit from federal Lifeline support. We find that our conclusion will prevent the unfortunate result of beginning to provide federal Lifeline assistance to consumers who qualify for assistance under the federal default criteria, and then terminating such support shortly thereafter if those consumers do not qualify pursuant to the new consumer qualification criteria adopted by the state legislatures.<sup>43</sup> Moreover, providing such assistance would reduce states' incentives to act expeditiously to conform their Lifeline consumer qualification requirements to the broad qualification standard established by Commission rules. We conclude, therefore, that it would not serve the public interest to provide Lifeline assistance to consumers who meet the federal default consumer qualification criteria where state qualification criteria for support are not based solely on income or factors directly related to income. Because Arizona will continue to use its current low-income consumer qualification criteria until July 30, 1998, we need not address U S West's request regarding retroactive credits for qualifying low-income consumers.

16. Finally, we deny the PUCO's request for a waiver of our rule requiring eligible telecommunications carriers to offer toll limitation to Lifeline consumers free-of-charge. Even though toll-limitation service currently is offered to Ohio's low-income consumers at the tariffed rate, we affirm our decision in the *Order* that eligible telecommunications carriers must offer toll-limitation service free-of-charge pursuant to the revised Lifeline program to receive federal support. Furthermore, we reiterate that, as provided in the *Order*, toll-limitation provided free-of-charge to qualifying low-income consumers is included in the definition of telecommunications services that will be supported by the universal service support mechanisms.<sup>44</sup> We are not persuaded that eligible telecommunications carriers in Ohio should be relieved of this obligation to provide low-income consumers with toll-limitation services free-of-charge.<sup>45</sup>

#### IV. ORDERING CLAUSE

17. It is THEREFORE ORDERED, pursuant to sections 4(i), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and 254 and sections 0.91, 0.291, 1.3, and 54.409 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and

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<sup>43</sup> States that provide intrastate support may establish their own consumer qualification criteria, provided such criteria are based on income or factors directly related to income. See *Order*, 12 FCC Rcd at 8973.


<sup>44</sup> *Order*, 12 FCC Rcd at 8979-8980.

<sup>45</sup> We note that carriers that wish to obtain federal support for providing Lifeline service may be able to amend their tariffs, or seek permission from the state commission to provide toll limitation to Lifeline consumers free-of-charge.



54.409 that the petitions of the Idaho PUC, Minnesota PUC, PUCO, and ACC are GRANTED to the extent set forth above, and are otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger,

Chief, Common Carrier Bureau